Supreme Court, U. S.
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No. 80-1133

IN THE

Supreme Court of the United States

OCTOBER TERM, 1980

WILLIAM FINGER,

Petitioner,

against

JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE
for the Second and Eleventh Judicial Districts,

Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK FOR THE SECOND JUDICIAL DEPARTMENT

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QUESTIONS PRESENTED

1. Does the Constitutional right of an attorney to notice an opportunity for a hearing, require that notice of charges and such hearing be instituted within a reasonable time from the filing of the complaint charging professional misconduct?

2. Is due process of law violated where an attorney is disbarred without any evidence whatsoever of professional misconduct?

3. Is due process of law violated where additional charges of impeding the proceeding are promulgated against an attorney for interviewing the witnesses against him in disciplinary proceedings?

OPINIONS BELOW

On the 9th day of October, 1980, the New York Court of Appeals denied petitioner leave to appeal from the order entered the 11th day of August, 1980 of the Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department disbarring petitioner from the practice of law. The opinion of the Appellate Division, Second Department, officially cited as 76 A.D. 2d 403 (2nd Dept., 1980) appears in the appendix.

JURISDICTION

The order of the New York Court of Appeals was entered on the 9th day of October, 1980, denying petitioner's application for leave to appeal from the order of the Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department disbarring petitioner and this petition was filed within ninety days of that date. This Court's jurisdiction is invoked under 28 U.S.C. Sec. 1257 (3).

CONSTITUTIONAL PROVISION INVOLVED IN THE CASE

The Fourteenth Amendment to the United States Constitution provides as follows:

> "...nor shall any State deprive any person of life, liberty or property without due process of law..."

STATEMENT OF THE CASE

Petitioner was an attorney and counselor at law, admitted to practice in the State of New York on the 15th day of December,

1965 by the Appellate Division of the Supreme Court of the State of New York for the Second Judicial District. Three separate complaints were filed against him, two by clients with fee disputes and a third by an attorney for an adverse party charging that petitioner had dealt directly with the client, despite alleged notice of the attorney's appearance in the action.

Charge One allegedly occurred on March 26th, 1973, when petitioner allegedly failed to remit to his client the sum of $6,801.40, the proceeds of an action recovered by petitioner for his client.

Charge Two allegedly occurred in June of 1974, when petitioner allegedly had a process server prepare affidavits of service for process that never had been served on behalf of his client. After a fee dispute, petitioner's client allegedly reported to the Grievance Committee the details of the alleged improper filing of affidavits of service.

Charge Three allegedly occurred on January 22nd, 1976, when petitioner allegedly negotiated a settlement of a matrimonial action with the wife of a client, without her attorney's consent, the wife claiming that she never retained an attorney.

Charge Four is a catch all accusing petitioner of attempting to impede the investigation, by attempting to settle with his clients in consideration for a withdrawal of the charges.

In October of 1974, the Grievance Committee of the Queens County Bar Association conducted a hearing on Charge Number Two, concerning the alleged filing with a Court of false affidavits of service by a process server retained by petitioner. The purpose of the hearing was to determine whether charges should be filed against petitioner. No hearing was conducted on charge number

one, accusing petitioner of misappropriation of client's funds, since the Grievance Committee did not feel that the complaint had merit. This hearing was ended October of 1974. The Bar Association never made a recommendation to the respondent, Joint Bar Association Grievance Committee, whether to file formal charges against petitioner.

The matter remained dormant for more than three years after conclusion of the hearing before the Bar Association until December 20th, 1977, when respondent Joint Bar Association Grievance Committee filed formal charges against petitioner, dated December 20th, 1977, reproduced in the appendix herein.

Petitioner by his attorney filed an answer, denying the charges against him and setting up affirmative defenses, including the deprivation of his Constitutional right to notice and opportunity for a meaningful hearing, by reason of the inordinate delay of more than three years from the preliminary hearing before the Bar Association and more than four years from the accrual of the charges, a copy of which answer is reproduced in the appendix herein.

On Motion of respondent, the Appellate Division, Second Department, struck the affirmative defenses and therefore, there was no opportunity to develop them at a hearing.

It is in this climate that a hearing took place before Hon. Alphonso M. LaPera, a Referee appointed by the Appellate Division to hear and report.

CHARGE ONE

At the hearing it was developed that Jesse Johnson, Sr. and his son, Jesse Johnson, Jr. were heavily engaged in narcotics traffic. *Senior* eventually received a sentence of twenty-five to life, which

fortunately for him, was reversed shortly before the hearing. *Junior* did not prove to be as fortunate as his father. He received a sentence of fifteen years to life, and was serving the sentence at the time of the hearing, and therefore, had to be transported from State Prison, to give his testimony, pursuant to Court Order.

Senior was the driving force in the flourishing narcotics trade, which peaked in 1970. *Senior* searched for business opportunities to launder his money. He found William H. Blair, with whom he went into the business of silk screen printing on T-shirts and blouses. A small private corporation was formed, called Paula Screen Printing Corp. and while Senior lent his capital to the enterprise, Blair lent his expertise. *Senior* brought his son, *Junior*, into the business.

In about 1972, a silk screen printing machine was purchased by the business from Precision Screen Machines Co. Inc., a New Jersey corporation, for $36,000. The machine was never delivered because the business paid only $16,000 toward the purchase price. Then the seller declined to return the full amount of the $16,000 in payments.

Senior testified that in October of 1972 he signed a retainer agreement for petitioner's law firm, Salaway, Goldenthal, Schreiber, Teller & Finger, to receive a contingent fee of one-third of the recovery from Precision Screen Machines Co. should they be able to recover the deposit. William H. Blair was with *Senior* at the time he discussed and signed the retainer. *Senior* offered the testimony that he did not know what he was signing, a *non-sequitur*, since obviously *Senior* went with Blair to seek out counsel to sue *Precision*. This was not the first time that *Senior* had had business with petitioner's law firm. In 1970 and 1971, he had retained them to represent him on one of his many narcotics charges, which terminated favorably, in that he was then spared a prison term.

Petitioner's law firm entered into negotiations with *Precision*, and an offer of $6,801.40 was made to settle the case. *Junior* came to the office and discussed the settlement with appellant. It was decided to settle the case. *Junior* signed a release on March 6, 1973. Like his father, he too, claims he did not know what he was signing. In fact, *Junior* even went one step further. He testified that he was never in petitioner's law office in 1973, having been there last in 1971, while at the same time, acknowledging the signature on the release to be his. So much for credibility! It should also be pointed out that counsel for Precision testified that he was the one who prepared the release, so there is no question about signing a document in blank.

Six days later, on March 12, 1973, a new, but familiar crisis occurred in the lives of *Senior* and *Junior*. Once again they were arrested for trafficking in narcotics. Once again they turned to petitioner for help, an understandable choice, since petitioner had successfully saved them a prison term on their last arrest. However, there was a matter of fee. Petitioner and Kenneth Saloway, his law partner, visited *Senior* and *Junior*, both being detained on high bail in the jail. *Senior* signed a document, witnessed by his son, assigning his two thirds share of the $6,801.40 settlement check from Precision to petitioner's law firm, for legal services in connection with the new, serious criminal charges then pending. Although *Senior* and *Junior*, with admirable consistency, testified at the hearing that they did not know what they were signing in the jail, they did not deny their desire to obtain petitioner's law firm's services to represent both defendants at the time. Indeed, the record is clear that the moneys assigned were earned since Kenneth Schreiber, a partner in the firm, ultimately tried *Junior's* case.

The check received from counsel for Precision, was made payable to petitioner, as attorney for the business, which he deposited in his wife's account. At that time, the law firm was in

the process of dissolving. Counsel for the Grievance Committee did not call any of the other partners to explain the method of accounting among the former partners. Therefore, it stands undisputed that petitioner was entitled to this fee, as part of the dissolution distribution.

Now, Blair, who ran the business for *Senior* and *Junior* enters into the picture. He contacted petitioner and asked him about the settlement. Petitioner who never was retained by Blair and never dealt with Blair, referred him to the Johnsons. Blair then told appellant that he found out that appellant settled the claim with Precision and unless he gives him the entire check, because he needs money, he will report this to the Grievance Committee and *October of 1973*, he carries out his threat.

No explanation has ever been offered why it took more than four years for the Grievance Committee to serve appellant with notice of charges on this charge.

However, brushing aside the inordinate and unconstitutional delay in prosecuting this charge, unfortunately, in the course of the investigation, prosecution and defense of this charge, what was overlooked is the common law retaining lien that an attorney has on all moneys of his client that comes into his possession, which the New York Court of Appeals had recent opportunity to discuss in *People v. Keefe*, 50 N.Y.2d 149 (1980). The prosecutor for the Grievance Committee, Gary L. Casella, never discusses the question of a lawyer's retaining lien in his learned 110 page brief to the Referee, nor was it discussed by defense counsel, nor by the Referee in making its report nor by the Appellate Division that found that appellant had converted the full $6,801.40 of the moneys coming into his possession which included the one-third contingency that undisputably was his own earned fee. It would be absurd to urge that petitioner undertook to press the claim against Precision without fee. The *nonsense* testimony by *Senior*,

admittedly the President of this "laundering" corporation, that he did not know he was retaining petitioner to prosecute the claim against Precision, when that was the precise reason for him and Blair to seek out appellant, is not entitled to an iota of consideration. Thus, there can be little doubt that petitioner had a retaining line of $2,267.13 against the $6,801.40. Therefore, the finding by the Appellate Division that petitioner converted the full $6,801.40 is clearly erroneous and reflects that it failed to consider the issue of an attorney's retaining lien, brushing aside the Constitutional issue accrued by reason of the delay.

Next, the record is abundantly clear that *Senior* and *Junior* were in jail, having been arrested after the release was signed, and wished to retain appellant to represent them on the serious criminal charges pending against them. *Senior* and *Junior* therefore, signed a letter in the jailhouse visiting room, assigning the balance of the proceeds to appellant's law firm for appellant's fee in the criminal matter. Thus, petitioner's retaining lien on the balance of the check $4,634.27 was for services rendered in the criminal case, to wit, partial representation and Kenneth Schreiber's acting as trial counsel for Johnson. Can anyone seriously urge that the $4,634.27 was not earned?

No evidence was introduced to controvert the proof that petitioner's law firm earned the fee. Therefore, not having challenged the value of the underlying professional services performed by appellant, the charge that he converted $6,801.40 is ludicrous, but with tragic consequences. By overlooking the principle of an attorney's retaining lien, the Court below, found petitioner guilty of a charge for which there was no evidentiary support, as a matter of law, to wit, that petitioner—not his law firm—stole a client's money.

A final word. Public policy is certainly not served by intimidation of members of the Bar. Giving credence to clients, who

claim that they did not understand what they were signing for a lawyer, where the contrary is self-evident, can only work to intimidate the profession. Certainly, a client should not be required to be represented by a second lawyer, when he signs a retainer, release or other document for counsel, the logical consequence of the credence given by the Grievance Committee to the claims of the Johnson, father and son, that they had no idea what they were signing, not even their initial retainer with petitioner, when each signed documents to accommodate their needs.

As a result of the Grievance Committee failing to recognize petitioner's retaining lien, Blair, who never had any dealings with appellant, was put in a position to effectively blackmail appellant. Thus, petitioner gave Blair $6,000 because of the unjust charges entertained against petitioner by the Grievance Committee to try to get Blair to withdraw the charges. This is the basis for the charge that appellant attempted to impede and obstruct the investigation, contained in Charge Four. Respondent Grievance Committee is far too sensitive. Firstly, it is abundantly clear that petitioner did not suborn Blair to testify falsely or furnish false information. Blair had no jurisdiction to determine whether charges would be pressed or not and petitioner's request to him to inform the Grievance Committee that he received restitution (to which he was not even entitled) and to therefore discontinue the prosecution, does not constitute impeding of an investigation, but a fact that should be considered in mitigation. Thus, what petitioner is accused of doing in paying $6,000 to Blair in settlement of the latter's claim, should not constitute professional misconduct nor for that matter impeding the investigation. Indeed, the sum paid by petitioner was less than the sum claimed and therefore, could not constitute obstruction. On the other hand, petitioner had the same right to confer with the witness, Blair, as did the Grievance Committee.

Concerning this charge, it was not considered in the course of the Queens County Bar Association preliminary hearing.

CHARGE TWO

Marvin Tabak was the second complainant. In 1970, he and his wife purchased a home, being represented by petitioner's law firm. In July of 1971, he conveyed his interest in the home to his wife, with petitioner's law firm preparing the deed.

Tabak, a partner in a stock brokerage business, was experiencing financial difficulties in 1972. A default judgment was taken against him by a creditor, Imperial Leather Goods, based upon a loan to him of $5,500, which claim he disputed. Petitioner's effort to vacate the judgment proved unsuccessful.

Next, in April, 1973, a second default judgment was entered against Tabak, this time for $5,000 loaned to Tabak by one Rinato, which loan he likewise denied.

On May 21, 1973, Tabak entered into a contract to sell the home he had put in his wife's name. The prospective purchaser paid petitioner's law firm a deposit in the amount of $7,900.

Petitioner was retained to move to vacate the Rinato judgment, which was granted on condition that the judgment entered and all liens remain intact until the conclusion of the litigation, thus, giving Tabak opportunity to defend against the Rinato claim.

It was discovered that Rinato had filed a lis pendens against Tabak on May 24, 1973 in the Nassau County Clerk's office, precluding closing on the contract of sale of Tabak's wife's house.

Petitioner moved Nassau County Supreme Court Judge Robert C. Meade for an order to show cause, which was signed on June 1, 1973, to vacate the lis pendens filed in Rinato vs. Tabak. It was made returnable June 8, 1973, and required personal service on the plaintiff or his attorney on or before June 4, 1973. On the return date, counsel for Rinato did not appear and on June 20, 1973, an order was entered by the County Clerk of Nassau County cancelling the Rinato notice of pendency.

The closing still could not take place, since Imperial Leather Goods likewise filed a lis pendens. Petitioner obtained a second order to show cause from Nassau County Supreme Court, this time on June 20, 1973, likewise to remove the second lis pendens. It was returnable for June 29, 1973, with provision for service upon either Imperial Leather Goods or counsel by June 22, 1973. On the return date, no appearance was made on behalf of Imperial Leather Goods. Justice Meade rendered a decision on July 2, 1973, vacating the lis pendens, but required that an order be settled on notice. When counsel for Imperial Leather Goods failed to appear on the settlement date fixed for the order, instead of signing it, Justice Meade had his secretary telephone counsel for Imperial, who allegedly expressed surprise over the proceeding, claiming not to have been served by the order to show cause or the order to be settled. Justice Meade then vacated his memorandum decision *sua sponte* and ordered a hearing as to the question of service of the papers. Tabak, who was in the midst of a bankruptcy proceeding at the time, then settled the Imperial Leather Goods judgment for $2,000, so that the hearing on the issue of service never took place.

By reason of the settlement of the lis pendens claim of Imperial, on July 27, 1973, Tabak and his wife were able to close the sale of their Roslyn house and they also purchased a new house in Oyster Bay.

The following day, Tabak came to the office of petitioner's law firm to settle his bill for the two closings and for the commercial litigation. There was a check waiting for him of $7,900 from the $9,900 deposit on the Roslyn home. This check was signed by Kenneth Saloway, Esq., one of the partners in the firm. Tabak agreed to pay the fee, but insisted that he wanted all of the escrow money immediately because he had personal problems and would give petitioner dated checks. When petitioner did not agree to this proposal, Tabak then accepted the check in the amount of $7,900, endorsing thereon that he did not agree with a $2,000 bill. He then began to blackmail petitioner. He told petitioner that unless he would give him the full escrow, without allowance for a fee, and extend him credit, he would go to the Bar Association, and tell them that petitioner intentionally arranged for "ashcan" service of the two orders to show cause brought on to vacate the lis pendens of Imperial Leather Co., by mailing it to an improper address. Petitioner told him he did not care what he did. Tabak then went to the Bar Association early in 1974 to file a complaint concerning the impropriety of service.

In September and October of 1974, the preliminary hearing took place on this claim at the Queens County Bar Association. The licensed process server, John A. Haynes, testified. He testified that on June 22, 1973, he made personal service on Elliot M. Rudick and his secretary of the order to show cause in the case of Imperial Leather Goods vs. Tabak, and executed an affidavit of service. He testified that he had a recollection of service on June 4, 1973 of service of the other order to show cause on David Pravda, Esq. in Renato against Tabak, at 233 Broadway, and executed an affidavit of service. Arlene Levy, secretary for the firm at that time, testified that she mailed the proposed order to Mr. Rudick of Imperial Leather and affirmed her affidavit of service.

This hearing closed October of 1974. It must be stressed that no

recommendation was made to the District Attorney of Queens County to investigate possible perjury by John A. Haynes and Arlene Levy and, of course, the matter remained dormant for more than three years until December 20, 1977, when petitioner was served with notice of charges. No explanation has been offered for the delay in promulgating the charges on the Tabak matter.

By the time the disciplinary hearing finally took place, John A. Haynes was dead. Thus, in a real sense, petitioner was prejudiced by the delay, in that his key witness, who gave exculpatory testimony concerning service at the preliminary hearing, was no longer available for petitioner and the Referee had to resort to examination of his testimony, an unsatisfactory substitute.

On May 3, 1974, following the filing of the complaint, petitioner and Tabak entered into an agreement, whereby petitioner would return to him $1,375 provided that Tabak was successful in getting the complaint withdrawn. In view of the fact that the complaint was spawned over a fee dispute, it is submitted that petitioner had the right to enter into negotiations to settle the dispute. Once again, there is no claim that petitioner sought to induce Tabak to testify falsely or mislead the Grievance Committee.

Other than alleged implied admissions by petitioner to Tabak, there was no evidence that petitioner engaged in such improper service as charged. The process server and secretary denied any wrongdoing. The Queens County Bar Association did not find sufficient cause to refer the matter to the District Attorney. On the other hand, Tabak's motive in bringing on these charges was concededly blackmail to settle a fee dispute, and to use the Grievance Committee. It almost worked. Petitioner agreed to return $1,375 if Tabak were successful in getting his complaint

withdrawn. It is most significant that the Grievance Committee showed surprising indifference over the prime motive of blackmail in making the charge and did not even see fit to call Kenneth Saloway as a witness, since Saloway, petitioner's law partner at the time, was the one who signed the check to Tabak that triggered the latter's ire and led to the charges herein.

Given the failure to call Saloway as a witness, and the insufficiency of the evidence of wrongdoing by appellant, in light of the testimony of the process server and secretary, coupled with the unexplained delay in prosecuting this charge, as a matter of law, it should have been dismissed. It is tragically absurd for an attorney to face disciplinary proceedings, allegedly when an independent contractor—a process server—is guilty of "sewer" service, assuming, without conceding, that that is what happened in the case at bar.

CHARGE THREE

The final charge against appellant likewise overlooks an important principle of law, to wit, that the relationship between attorney and client is confidential in nature, and cannot be created by barter from one lawyer to another. In 1975, McLaurin retained petitioner to institute a divorce action in New York against Alease McLaurin, his wife, who was then a resident of Philadelphia, Pennsylvania. Mrs. McLaurin, upon being served with process, consulted Joseph Fox, an attorney in Philadelphia, who was not admitted in New York. Fox referred her to Walter Black, Esq., an attorney who practices in Great Neck. Also at issue was title to the marital home.

The key on which this claim should have turned is that Mrs. McLaurin never met with Black and never entered into a retainer agreement with him. Therefore, Black did not represent Mrs.

McLaurin. Indeed, Mrs. McLaurin testified at this hearing that she did not want Mr. Black as an attorney. Thus, the order to show cause prepared by Mr. Black was for a "client" who admittedly never retained him.

What gave rise to the claim is that petitioner met Mrs. McLaurin in Court when the case appeared on the calendar and was effective in working out a reconciliation between the couple. It is this reconciliation that petitioner worked out, without the consent of Black, whom Mrs. McLaurin never retained, that resulted in the charges against petitioner that he consulted with Mr. Black's client, without the latter's permission. Mr. Black's real gripe was that because of the reconciliation, Mr. Black was prevented from availing himself of the opportunity to get Mrs. McLaurin to retain him so he could earn a fee.

Although Black had prepared an order to show cause to strike Mr. McLaurin's case from the uncontested matrimonial calendar, it is conceded that he did so without any retainer agreement with Mrs. McLaurin, thereby exposing her to a possible fee that might not have been satisfactory with her.

It was conceded by Black that he prepared these papers without authorization from Mrs. McLaurin. Thus, petitioner was found guilty of tampering with another lawyer's client, by reconciling the parties to a matrimonial action, despite the fact that the lawyer allegedly aggrieved had never been retained by his wife.

It is respectfully submitted that clients are not like athletes, whose professional contracts may sometimes be transferred without approval. Mrs. McLaurin never retained Black. Therefore, there was no attorney-client relationship and the charge of tampering was improperly sustained.

The Referee in conclusory language issued a report finding petitioner guilty on all four charges. As already pointed out, in respect to charge number one, the referee found petitioner guilty of converting the entire $6,801.40, which included his own fee! Respondent moved to confirm the referee's report, which motion was granted by the Appellate Division, Second Department and petitioner was disbarred. As stated, the New York Court of Appeals denied petitioner's motion for leave to appeal to that Court.

REASONS FOR GRANTING THE WRIT

This case presents an issue of far reaching importance concerning the issue of the quantum of due process that must attend grievances procedures against licensed professionals and more particularly attorneys, who unusually find themselves unprotected Constitutionally to the extent of other professionals.

Although there have been pronouncements concerning the limits of State action in disciplining attorneys, they have rarely been applied in cases other than where basic issues are involved. Thus, in *Willner v. Committee on Character and Fitness*, 373 U.S. 96 (1963), this Court held that an applicant cannot be barred from admission, for alleged character deficiencies, without opportunity for a hearing, the Court writing, "the requirements of procedural due process must be met before a State can exclude a person from practicing law. A State cannot exclude a person from the practice of law or from any other occupation in a manner or for reasons that contravene the Due Process of Equal Protection Clause of the Fourteenth Amendment." The issue is what are the minimum requirements of "the Due Process or Equal Protection Clause" when applied to professional disciplinary proceedings.

Disbarment proceedings carry "such drastic consequences for the individual attorney that the State's power to divest one of a license to practice law may not abrogate federally protected rights." *Erdmann v. Stevens*, 458 F.2d 1205 (2nd Circ., 1972).

In *In re Ruffalo*, 390 U.S. 544 (1968), this Court held that bar association disciplinary proceedings are quasi-criminal in nature and set aside a disbarment where the charges against the attorney were modified in the course of the hearing.

Nevertheless, New York Courts have remained steadfast to a policy that disciplinary proceedings, despite their drastic consequences upon the Constitutional right of an attorney to earn a livelihood, are basically administrative in nature and the usual Constitutional requirements are not applicable. Thus, in *In re O'Hara*, 63 A.D.2d 500 (1st Dept., 1978), the Appellate Division wrote, "The rule with respect to a speedy trial applicable in a criminal prosecution does not apply to disciplinary proceedings, which are not criminal in nature ... Neither statute of limitations nor the doctrine of laches applies to disciplinary proceedings." Thus, in the case at bar, there was delay of more than four years from the filing of the complaint and more than three years from a preliminary hearing by the local bar association, before formal charges were even filed. Petitioner's affirmative defense challenging the Constitutionality of such delay was struck on motion, reflecting New York State policy that basic Constitutional rights do not attend disciplinary proceedings.

Moreover, in the case at bar, petitioner was disbarred on no more than the whim and caprice of those who prosecuted the charges. On Charge One, he was found guilty of converting a sum of money, one third of which encompassed his own fee for services rendered in obtaining the fund and the balance constituting client's moneys in his possession, for which he

undisputably had a retaining lien for services performed in a criminal matter for his client. Thus, petitioner was found guilty of converting moneys, allegedly belonging to a client, when they had been earned and assigned to him for legal services undisputably performed and where no issue was raised that the amount was unreasonable considering the nature of the services.

He was found guilty of filing false affidavits of service, when such service was made by a process server, an independent contactor, who had died by the time of the hearing, but who testified at the earlier inquiry by the Bar Association that service had been properly made and that petitioner never instructed him to make improper service. It is little wonder that the local Bar Association that heard the charges initially never recommended that respondent prosecute them.

He was found guilty on the third charge of negotiating with another lawyer's client, when the record is clear that the client never retained the lawyer who made the complaint. Indeed, in respect to the third charge, petitioner managed to effect a reconciliation between an estranged husband and wife.

Finally, he was found guilty on the fourth charge of impeding the investigation, not for seeking to suborn the complainants but merely for conferring with them.

In New York, where an attorney seeks to interview a witness who files charges against him, he faces the additional charge of impeding the investigation. In *Washington v. Texas*, 388 U.S. 14 (1967), this Court pointed out that "the right to offer the testimony of witnesses, and to compel their attendance, if necessary is in plain terms the right to present a defense, the right to present the defendant's version of the facts as well as the prosecution's to the jury so it may decide where the truth lies." It

is submitted that this principle should be applicable to disciplinary proceedings. Indeed, in no other judicial or administrative proceeding, does a party risk additional charges for attempting to prepare his defense, as in bar association grievance proceedings. It is not only a denial of due process of law—it is oppressive—for an attorney to face additional charges for conferring with the witnesses who made complaint against him. These witnesses should not be the exclusive domain of the prosecuting body. The defense should have the same access to them, without the intimidating consequence of additional charges. It is submitted that impeding a proceeding should only lie where efforts are made at subornation, which is clearly not present in the case at bar.

This petitioner presents opportunity for this Court to pass on the issues whether the rights to a speedy trial, reasonably sufficient evidence and to prepare a defense without intimidation are made applicable to bar association disciplinary proceedings by virtue of the due process of law requirement of the Fourteenth Amendment.

CONCLUSION

For the reasons set forth above, a writ of certiorari should issue to review the judgment of the Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department.

Respectfully submitted,

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APPENDIX A

STATE OF NEW YORK, COURT OF APPEALS

At a session of the Court, held at Court of Appeals Hall in the City of Albany on the ninth day of October A.D. 1980

PRESENT, HON. LAWRENCE H. COOKE,
Chief Judge, presiding.

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2 Mo. No. 1037

In the Matter of

William L. Finger, an attorney and counselor at law admitted under the name of William Lee Finger.

Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts,

Respondent,

vs.

William L. Finger,

Appellant.

A motion for leave to appeal and for a stay to the Court of Appeals in the above cause having been heretofore made upon the part of the appellant herein and papers having been submitted thereon and due deliberation thereupon had, it is

ORDERED, that the said motion for leave to appeal be and the same hereby is denied and it is

ORDERED, that the said motion for a stay be and the same hereby is dismissed as academic.

Joseph W. Bellacosa
Clerk of the Court

APPENDIX B

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on August 11, 1980

HON. MILTON MOLLEN, *Presiding Justice*,
HON. JAMES D. HOPKINS,
HON. VINCENT D. DAMIANI,
HON. VITO J. TITONE,
HON. LEON D. LAZER, *Associate Justices*

In the Matter of William L. Finger, and attorney and counselor-at-law, admitted under the name William Lee Finger.

Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts,

Petitioner,

William L. Finger,

Respondent.

ORDER OF DISBARMENT

A disciplinary proceeding having been instituted in this court upon the petition of the Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts in respect to William L. Finger, an attorney and counselor-at-law, admitted to practice by this court on December 15, 1965 under the name William Lee Finger; the petition praying that the respondent be disciplined for professional misconduct upon the charges therein set forth; the proceeding having come on before this court by a notice of petition, dated December 20, 1977; and the respondent having filed an answer thereto; and this court by an order dated April 21, 1978, having, *inter alia*, referred the issues raised by the petition and the answer to Hon.

ALPHONSO LaPERA, a former Judge of the Nassau County Court, to hear and report, with his findings upon each of the issues; thereafter, the said Justice having held a hearing and having filed his report with this court on October 23, 1979, together with a transcript of the hearing; and the petitioner having moved, by a notice of motion dated October 24, 1979, to confirm the said report and the respondent having moved by a notice of cross motion dated November 1, 1979 to disaffirm said report;

Now, on reading and filing the petition verified December 20, 1977; the answer verified January 18, 1978; the report, the transcript of the hearing; the notice of motion and the affidavit of Gary L. Casella, in support of petitioner's motion, respondent's cross motion and affidavit of Herbert A. Lyon to disaffirm said report; and Gary L. Casella, Esq., having appeared of counsel for petitioner and Herbert A. Lyon, Esq., having appeared of counsel for respondent; due deliberation having been had thereon; and upon the per curiam opinion of the court, dated August 11, 1980, filed herein and made a part hereof, it is unanimously

ORDERED that the petitioner's motion to confirm the report is hereby granted, and it is further

ORDERED that the respondent's cross motion to disaffirm the report is hereby denied, and it is further

ORDERED that, effective August 11, 1980, the respondent William L. Finger, admitted under the name of William Lee Finger, be and he hereby is disbarred from the practice of the law, and the name of William L. Finger, admitted under the name William Lee Finger, is hereby directed to be struck from the roll of Attorneys and Counselors-at-Law, and it is further

ORDERED and DIRECTED that the respondent William L. Finger, admitted under the name of William Lee Finger, shall promptly comply with this court's rules governing the conduct of disbarred, suspended and resigned attorneys, a copy of such rules being annexed hereto and made a part hereof, and it is further

ORDERED that, pursuant to statute (Judiciary Law, §90), effective August 11, 1980, William L. Finger, admitted under the name of William Lee Finger, be and he hereby is commanded to desist and refrain: (1) from practicing law in any form, either as principal or as agent, clerk or employee of another; (2) from appearing as attorney or counselor-at-law before any judge, justice, board, commission or other public authority; (3) from giving to another an opinion as to the law or its application, or any advice in relation thereto; and (4) from holding himself out in any way as an attorney or counselor-at-law.

Enter:
IRVING N. SELKIN
Clerk of the Appellate Division

APPELLATE DIVISION — SUPREME COURT
SECOND JUDICIAL DEPARTMENT
STATE OF NEW YORK

I, IRVING N. SELKIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this with the original filed in my office on Aug. 11, 1980 and that this copy is a correct transcription of said original.

IN WITNESS WHEREOF I have hereunto set my hand affixed of this Court on Aug. 14, 1980.

IRVING N. SELKIN

APPENDIX C

August 11, 1980

SUPREME COURT: APPELLATE DIVISION
SECOND JUDICIAL DEPARTMENT.

MOLLEN, P.J., HOPKINS, DAMIANI, TITONE and LAZER, JJ.

In the Matter of

WILLIAM L. FINGER, an attorney and counselor at law, admitted under the name of William Lee Finger.

JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

Petitioner;

WILLIAM L. FINGER,

Respondent.

Nos. 6495 and 6646.

DISCIPLINARY proceeding instituted by the Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts. By order of this court dated April 21, 1978, the issues were referred to Honorable ALPHONSO M. LaPERA, a retired Judge of the Nassau County Court, to hear and report.

Frank A. Finnerty, Jr., Brooklyn, N.Y.
(Gary L. Casella of counsel), for petitioner.

Herbert A. Lyon, Kew Gardens, N.Y.,
for respondent.

PER CURIAM: The respondent was admitted to practice by this court on December 15, 1965 under the name of William Lee Finger. In this proceeding to discipline the respondent for professional misconduct, the petitioner moves to confirm the report of the Referee to whom the issues were referred for hearing and report, and the respondent cross-moves to disaffirm said report.

The Referee sustained all charges set forth in the petition alleging, *inter alia*, the respondent's conversion of clients' funds totaling approximately $6,800; the respondent's filing of false and fraudulent affidavits in the Supreme Court, Nassau County, in an effort to deceive the Justices of that court as well as adverse parties in litigated matters; and the respondent's various attempts to impede the investigation of the complaints of professional misconduct lodged against him, including his offering of restitution to complainants as an inducement for them to withdraw their complaints.

After reviewing all of the evidence, we are in full agreement with the findings of the Referee. The respondent is guilty of the charges of professional misconduct. Accordingly, the petitioner's motion to confirm the report of the Referee is hereby granted and the respondent's cross motion to disaffirm the report is denied.

In determining an appropriate measure of discipline to be imposed, we have taken into consideration the Referee's inability to find any factors in mitigation of the respondent's conduct. The respondent is therefore adjudged guilty of serious professional misconduct and should be, and he hereby is, disbarred from further practice of law and his name is ordered removed from the roll of attorneys and counselors at law, effective forthwith.

MOLLEN, P.J., HOPKINS, DAMIANI, TITONE and LAZER, JJ., concur.

APPENDIX D

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION:
SECOND JUDICIAL DEPARTMENT

In the Matter of William L. Finger, Admitted Under the Name of William Lee Finger, an Attorney and Counselor at Law:

JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

Petitioner,

WILLIAM L. FINGER,

Respondent.

NOTICE OF PETITION

SIRS:

PLEASE TAKE NOTICE, that upon the annexed petition of A. Paul Goldblum, Chairman of the Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts, verified on the 20th day of December, 1977, a motion will be made before this Court at the Courthouse, 45 Monroe Place, in the Borough of Brooklyn, County of Kings, City and State of New York on the 13th day of January, 1978, at 9:30 o'clock in the forenoon of that day, or as soon thereafter as counsel can be heard, for an order directing that the respondent, William L. Finger, as an attorney and counselor at law, be disciplined upon the charges set forth in the annexed petition, and for such other and further action upon the charges embodied in the annexed petition, as justice may require, and for such other

and further relief in the premises as may be just and proper. Respondent shall serve and file two copies of his answer with proof of service on or before the return date.

Dated: Brooklyn, New York
December 20, 1977

Yours, etc.,
NICHOLAS C. COOPER
Attorney for Petitioner
Office and P.O. Address
16 Court Street
Brooklyn, New York 11241
(212) 624-7851

TO: WILLIAM L. FINGER, ESQ.
Respondent
125-10 Queens Boulevard
Kew Gardens, New York

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION:
SECOND JUDICIAL DEPARTMENT

In the Matter of William L. Finger, Admitted Under the Name of William Lee Finger, An Attorney and Counselor at-Law:

JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

Petitioner,

WILLIAM L. FINGER,

Respondent.

TO THE HONORABLE, THE PRESIDING JUSTICE AND ASSOCIATE JUSTICES OF THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT:

The petition of the Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts respectfully alleges that:

FIRST: By order of this Court, dated and filed March 25, 1977, the Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts was authorized to institute and prosecute a disciplinary proceeding in this Court against William L. Finger based on the acts of professional misconduct as set forth in the report of the Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts, dated March 17, 1977, and on any other charges of

professional misconduct by said attorney which may come to said Committee's attention. Further, said order of March 25, 1977, appointed Nicholas C. Cooper, Esq., as attorney for the petitioner in this proceeding.

SECOND: Said order of March 25, 1977, was duly made and filed by this Court pursuant to the authorization of Section 90 of the Judiciary Law and pursuant to Section 691.4 of the Rules Governing the Conduct of Attorneys of this Court.

THIRD: The respondent, William L. Finger, was admitted to practice as an attorney and counselor-at-law in the Courts of the State of New York by the Appellate Division of the State Supreme Court, Second Judicial Department, on December 15, 1965, under the name of William Lee Finger.

FOURTH: Upon information and belief at all times hereinafter mentioned, respondent was engaged in the practice of law and maintained an office for said purpose in Queens County, State of New York.

FIFTH: Upon information and belief respondent, William L. Finger, has been guilty of illegal, corrupt, and unethical practices and of professional misconduct and conduct prejudicial to the administration of justice as an attorney and counselor-at-law in that:

CHARGE ONE

A. Respondent, William L. Finger, has been guilty of converting clients' funds to his own use, as follows:

1. In or about November, 1972, respondent was retained by William H. Blair and Jesse Johnson, principals of Paula Screen

Printing Corp., a New York corporation (hereinafter referred to as "Paula"), to recover the sum of $16,000, paid by "Paula" to Precision Screen Machines Co.; Inc., a New Jersey corporation (hereinafter referred to as "Precision"), on account of a contract for the purchase of a printing machine. In or about February, 1973, respondent, without the knowledge or consent of his client, agreed to accept on behalf of "Paula" the sum of $6,801.40 in settlement of said claim. On or about March 26, 1973, respondent received "Precisions" check in the sum of $6,801.40, payable to "William L. Finger, Attorney for Paula Screen & Print Company." Thereafter, respondent, without the knowledge or consent of his client, endorsed said settlement check, caused same to be delivered to his wife, Anita J. Finger, who on April 4, 1973, deposited same in her personal savings account at Peninsula National Bank, Hewlett, New York.

CHARGE TWO

B. Respondent, William L. Finger, has been guilty of engaging in conduct involving fraud, deceit, misrepresentation and conduct prejudicial to the administration of justice, namely, deceiving justices of the Supreme Court, County of Nassau, and adverse parties in litigated matters, by causing false and fraudulent affidavits of service to be filed in said Court, as follows:

1. In or about May, 1970, respondent represented Marvin Tabak and Ronnie Tabak, his wife, in the purchase of a home in Roslyn Harbor, New York. On or about July 29, 1971, respondent, at the request of his clients, prepared and caused Mr. and Mrs. Tabak to execute a deed conveying title to the Roslyn Harbor property soleiy to Ronnie Tabak. On November 21, 1972, Imperial Leather Goods Co. (hereinafter referred to as "Imperial"), entered a $6,101 default judgment against Marvin

Tabak in the Civil Court, Kings County, as a result of which respondent was unable in February, 1973, to arrange a second mortgage on the Roslyn Harbor property. On March 29, 1973, Mr. and Mrs. Tabak, represented by respondent, entered into a contract to purchase a home in Oyster Bay Cove, New York, and on March 30, 1973, respondent moved by order to show cause to vacate the "Imperial" default judgment (following a traverse, on May 25, 1973, said motion was denied). On April 11, 1973, respondent, who was defending Marvin Tabak in an action commenced by Frank Rinato in the Civil Court, Kings County, failed to appear at a calendar call and as a result on April 23, 1973, following an inquest, a default judgment was entered against Tabak in the sum of $5,619. On May 22, 1973, Ronnie Tabak, represented by respondent, entered into a contract to sell the Roslyn Harbor property; respondent, as attorney for the seller, received a contract deposit of $9,650, which sum was to be held in escrow.

On May 24, 1973, David A. Pravda, attorney for Frank Rinato, filed a *lis pendens* with the Clerk of the County of Nassau against the Roslyn Harbor property and simultaneously commenced an action in the Supreme Court of Nassau County to set aside the 1971 conveyance to Mrs. Tabak as fraudulent (on June 6, 1973, Elliot M. Rudick, attorney for Imperial Leather Goods Co., filed another *lis pendens* with the Clerk of the County of Nassau and he likewise commenced an action in the Supreme Court of Nassau County to set aside the conveyance by Tabak to his wife on the grounds that the conveyance was in fraud of Tabak's creditors). On May 30, 1973, respondent moved by order to show cause returnable in the Civil Court, Kings County, to vacate the Rinato default (by order dated June 29, 1973, said motion was granted "...on condition that the judgment entered heretofore and all liens remain intact until the conclusion of the litigation"). On June 1, 1973, respondent prepared and caused

Nassau County Supreme Court Justice Robert C. Meade to sign an order to show cause in the action Rinato vs. Tabak, directing the plaintiff to show cause on June 8, 1973, why the notice of pendency filed on May 24, 1973, should not be vacated. Said order to show cause provided that it, together with the supporting affidavits, was to be served personally upon the plaintiff or his attorney on or before June 4, 1973 (on or about June 13, 1973, a voluntary petition in bankruptcy was filed on behalf of Marvin Tabak in the United States District Court for the Eastern District of New York). Thereafter:

a) Respondent, with knowledge that neither the plaintiff, Frank Rinato, nor his attorney, David Pravda, had been personally served with the June 1, 1973, order to show cause and affidavits, caused an affidavit to be filed falsely attesting to personal service, purportedly on June 4, 1973, of the order to show cause and affidavits upon David A. Pravda. On June 8, 1973, neither the plaintiff, Frank Rinato, nor his attorney appeared or opposed the motion and Mr. Justice Andrew J. DiPaola granted same, directing the May 24, 1973, notice of pendency cancelled of record.

b) On June 20, 1973, respondent prepared and caused Nassau County Supreme Court Justice Andrew J. DiPaolo to sign an order to show cause in the action of "Imperial" vs. Tabak, directing the plaintiff to show cause on June 29, 1973, why the notice of pendency filed on June 6, 1973, should not be vacated. Said order to show cause provided that it, together with the supporting affidavit, was to be served upon the plaintiff or his attorney on or before June 22, 1973. Respondent, with knowledge that neither the plaintiff, "Imperial", nor its attorney, Elliot Rudick, had been personally served with the June 20, 1973 order to show cause and affidavit, caused an affidavit to be filed, falsely attesting to personal service, purportedly on June 22,

1973, of the order to show cause upon Elliot M. Rudick. On the return of said motion, neither the plaintiff nor his attorney appeared or opposed the motion and Mr. Justice Robert C. Meade, by decision dated July 2, 1973, granted same, directing the June 6, 1973, notice of pendency cancelled of record; said decision provided for settlement of the order on notice.

c) On or about July 2, 1973, respondent, with knowledge that a proposed order, noticed for settlement on July 3, 1973, had not been served upon the plaintiff or his attorney, Elliot Rudick, caused an affidavit to be filed falsely attesting to personal service, purportedly on July 2, 1973, of the proposed order upon Elliot Rudick. On or about July 3, 1973, Elliot Rudick filed an affidavit with Mr. Justice Meade, averring that he had no prior knowledge of the motion to vacate and was not served with either the order to show cause and affidavit or proposed order. By order dated July 10, 1973, Mr. Justice Meade vacated his July 2, 1973 decision and directed a hearing for August 6, 1973, finding that:

> "The affidavit of the plaintiff's attorney raises the issue of service of both the order to show cause and the proposed order setting aside the notice of pendency and a hearing is required to elicit the true facts."

d) On or about July 27, 1973, title closed on the Roslyn Harbor property, the matter of "Imperial" vs. Tabak was settled for the sum of $2,000 and a stipulation of discontinuance was filed by respondent in the Supreme Court, Nassau County action of "Imperial" vs. Tabak.

CHARGE THREE

C. Respondent, during the course of his representation of the husband in a contested matrimonial matter and without the consent of the wife's attorney, intentionally communicated with

the wife regarding the subject of the litigation, when he knew her to be represented by counsel, as follows:

1. On or about August 5, 1975, respondent, on behalf of George McLaurin, instituted an action for divorce in the Supreme Court, Queens County, against his wife, Alease McLaurin, upon the grounds of cruel and inhuman treatment. Mrs. McLaurin failed to interpose a timely answer and respondent filed a note of issue and placed the matter on the uncontested trial calendar. In or about September 1975, Mrs. McLaurin, who was living on public assistance in Philadelphia, Pennsylvania, retained attorney Joseph Fox, who referred the matter to New York attorney Walter Black. On or about September 30, 1975, Mrs. McLaurin, through her attorney, Walter Black, moved by order to show cause to vacate the note of issue and for leave to interpose an answer containing a counterclaim based on abandonment. Said motion was granted on November 10, 1975, and on November 19, 1975, respondent served Black with the plaintiff-husband's answer; the matter was placed on the contested calendar. On January 22, 1976, the matter appeared on the calendar for trial and was adjourned since only Black was present; neither respondent nor his client appeared at the call. Thereafter:

a) On January 22, 1976, with knowledge that Alease McLaurin was represented by Black and without Black's knowledge or consent, respondent engaged Mrs. McLaurin in conversation regarding the subject mater of the litigation, both at the courthouse and at respondent's office.

b) As a result of these conversations and without the knowledge or consent of Mrs. McLaurin's attorney, respondent, on January 22, 1976, prepared a deed whereby Mrs. McLaurin was to convey to her husband her undivided one-half interest in premises 164-52 Nadal Place, Jamaica, New York, which they

owned as tenants by the entirety; respondent mailed said deed to Mrs. McLaurin with instructions to sign and return same to him, which she did.

c) On or about March 8, 1976, respondent prepared and caused Mrs. McLaurin to sign a letter discharging Joseph Fox as her attorney in the divorce action. On March 15, 1976, upon application to Mr. Justice Harold Hyman, Walter Black was relieved as attorney for Mrs. McLaurin, who chose to proceed without counsel.

CHARGE FOUR

D. Respondent has knowingly attempted to impede and obstruct the legitimate investigation of complaints of professional misconduct against him, as follows:

1. On or about October 12, 1973, William H. Blair filed a complaint with the Queens County Bar Association, alleging in substance that respondent had failed to account for $6,800 due the client. Thereafter:

a) With knowledge that the Queens County Bar Association was actively investigating the Blair complaint, respondent, on or about December 17, 1973, offered to return the sum of $6,000 to his client, upon condition that Blair forward a letter to the Bar Association withdrawing his complaint against respondent.

b) On or about December 17, 1973, respondent prepared and induced William H. Blair to sign a letter addressed to Charles A. McGarvey, a member of the Grievance Committee of the Queens County Bar Association, which letter falsely stated that the complaint was a "gross misunderstanding" and requested that it be withdrawn. Respondent then delivered a $6,000 check to Blair.

2. On or about December 10, 1973, Marvin Tabak filed a complaint with the Queens County Bar Association, alleging, among other things, that respondent took a $2,000 fee from an escrow fund without the client's consent. Thereafter:

a) With knowledge that the Queens County Bar Association was actively investigating the Tabak complaint, respondent, in or about May 1974, offered to pay the sum of $1,375 to his client upon condition that Tabak forward a letter to the Bar Association withdrawing his complaint against respondent and that same be accepted.

b) On or about May 3, 1974, respondent prepared and induced Marvin Tabak to sign an escrow agreement, which provided, among other things, that a mutual friend, Arthur Rothlein, would be paid by respondent the sum of $1,375 to be held in escrow upon condition that Tabak formally withdraw his complaint and upon the further condition that said monies would be released only upon Rothlein "receiving formal written notice of the approval of the withdrawal of the complaint by the Queens County Bar Association..."

3. On or about October 16, 1975, Evelyn Sanders filed a complaint with the Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts, alleging in substance that she retained respondent on August 18, 1975, to institute an action for divorce; although she terminated his services on August 22, 1975, respondent insisted on payment of his $1,200 fee and commenced suit against her to recover the same. Thereafter:

a) With knowledge that the Joint Bar Association Grievance Committee was actively investigating the Sanders complaint and at a time when respondent had secured a default judgment

against his client and had caused an income garnishee to be executed, respondent on April 13, 1976, offered to release his client's income garnishee, upon condition that Mrs. Sanders falsely advise the Joint Bar Association Grievance Committee that she had again retained respondent and request that her complaint be withdrawn.

b) By letter dated April 13, 1976, respondent falsely advised the Joint Bar Association Grievance Committee that Mrs. Sanders had requested him to resume "...representation of her against her husband..." and "...that she was sorry for the action she took..."

c) On or about April 16, 1976, respondent prepared and induced Mrs. Sanders to sign a retainer agreement and a letter to the Joint Bar Association Grievance Committee, which letter falsely stated that she had again retained respondent and requested that her complaint be withdrawn.

SIXTH: Respondent, William L. Finger, knew or should have known in committing the acts aforesaid, that he was: violating the applicable statutes of the State of New York; the Code of Professional Responsibility of the New York State Bar Association, effective January 1, 1970, as amended, including DR 1-102(A)(4)(5)(6), DR 7-104(A)(1)(2) and DR 9-102(A)(B), and his inherent duty as an attorney and counselor at law.

SEVENTH: The sources of petitioner's knowledge and the grounds for his belief are the facts in evidence as set forth in the report of the Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts dated March 17, 1977, and other evidence adduced by said Committee.

WHEREFORE, petitioner prays that an order directing that

the respondent, William L. Finger, as an attorney and counselor at law be disciplined upon the charges as set forth herein, and for such other action as may be contemplated by Section 90 of the Judiciary Law of the State of New York.

Dated: Brooklyn, New York
December 20, 1977

A. PAUL GOLDBLUM, CHAIRMAN
Joint Bar Association
Grievance Committee for the
Second and Eleventh
Judicial Districts

STATE OF NEW YORK)
COUNTY OF KINGS) ss.:

A. PAUL GOLDBLUM, being duly sworn, deposes and says:

That he is Chairman of the Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts, the petitioner in the within proceeding.

That he has read the foregoing petition and knows the contents thereof and that the same is true upon information and belief.

A. PAUL GOLDBLUM,
Chairman

Subscribed to and sworn to before me
this 20 day of December, 1977.

ELLEN MARKS,
Commissioner of Deeds
City of New York 2-1201
Certificate filed in Kings County
Commission Expires May 1, 1979

APPENDIX E

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION:
SECOND JUDICIAL DEPARTMENT

In the Matter of William L. Finger, Admitted Under the Name of William Lee Finger, an Attorney and Counselor at Law:

JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

Petitioner,

WILLIAM L. FINGER,

Respondent.

VERIFIED ANSWER

Respondent, answering the Petition of the petitioner, by his attorneys, Lyon & Erlbaum, Esqs., respectfully showed to this Court and alleged as follows:

1. Lacks knowledge or information sufficient to form a belief as to the truth of each and every allegation contained in Paragraphs numbered "FIRST" and "SECOND."

2. Denies each and every allegation contained in Paragraph number "FIFTH".

3. Denies each and every allegation contained in Paragraph number "Charge One A."

4. Denies each and every allegation contained in Paragrah

number "Charge One A1," and sets forth that Jesse Johnson retained the firm of Salaway, Schreiber, Teller and Finger, to recover a sum of money paid by Paula Screen Printing Corp. to Precision Screen Machines Company, Inc., and further sets forth that the respondent endorsed the check enumerated therein with the consent and knowledge of Jesse Johnson.

5. Denies each and every allegation contained in the Paragraph numbered "Charge Two B."

6. Denies each and every allegation contained in the sentence beginning "In or about May, 1970," of Paragraph number "Charge Two B1," and sets forth that the firm of Salaway, Schreiber, Teller and Finger, represented Marvin and Ronnie Tabak. Lacks knowledge and information sufficient to form a belief as to the truth of each and every allegation contained in the sentence beginning "On or about July 29, 1971," of the said paragraph. Denies each and every allegation contained in the sentence beginning "On November 21, 1972," of the said paragraph, and sets forth that a judgment was entered against Marvin Tabak by Imperial Leather Goods. Denies each and every allegation contained in the sentence beginning "On March 29, 1973," of the said paragraph, and sets forth that Mr. and Mrs. Tabak were represented by the firm of Salaway, Schreiber, Teller and Finger, and the firm moved to vacate the "Imperial default Judgment." Denies each and every allegation contained in the sentence beginning "On April 11, 1973," of the said paragraph, and sets forth that a default judgment was entered against Tabak in the sum of $5,619.00. Denies each and every allegation contained in the sentence beginning "On May 22, 1973," of the said paragraph, and sets forth that the firm of Salaway, Schreiber, Teller and Finger represented Ronnie Tabak and that she entered into a contract to sell the Roslyn Harbor property, and that the firm of Salaway, Schreiber, Teller and Finger, received a contract

deposit of $9,650.00.

7. Denies each and every allegation contained in the sentence beginning "On May 30, 1973," of the paragraph beginning "On May 24, 1973," and sets forth that the firm of Salaway, Schreiber, Teller and Finger, moved by order to show cause in the Civil Court, Kings County, to vacate the Rinato default. Denies each and every allegation contained in the sentence beginning "On June 1, 1973," of the said paragraph, and sets forth that the firm of Salaway, Schreiber, Teller and Finger, prepared an order and said order was signed by Nassau County Supreme Court Justice Robert C. Meade. Denies each and every allegation contained in the sentence beginning "Respondent, with knowledge that neither the plaintiff," of the paragraph numbered "Charge Two B1(a)" lacks knowledge and information sufficient to form a belief as to the truth of each and every allegation contained in the sentence beginning "On June 8, 1973," of this said paragraph.

8. Denies each and every allegation contained in the sentence beginning "On June 20, 1973," of the paragraph designated "Charge Two B1(b)" and sets forth that the firm of Salaway, Schreiber, Teller and Finger, prepared an order to show cause which was signed by Nassau County Supreme Court Justice Andrew J. DiPaolo, in the action "Imperial v. Tabak." Denies each and every allegation contained in the sentence beginning "Respondent, with knowledge that neither the plaintiff," of the said paragraph. Lacks information and knowledge sufficient to form a belief as to the truth of each and every allegation contained in the sentence beginning "On the return date of the said motion," of the said paragraph.

9. Denies each and every allegation contained in the sentence beginning "On or about July 2, 1973," of the paragraph designated "Charge Two B1(c)."

10. Lacks knowledge and information sufficient to form a belief as to the truth of each and every allegation contained in the paragraph numbered "Charge Two B1(d)."

11. Denies each and every allegation contained in the paragraph numbered "Charge Three C."

12. Denies each and every allegation contained in the sentence beginning "On or about August 5, 1975," of the paragraph numbered "Charge Three C1," and sets forth that the firm of Finger, Goldberg, Zinner, and Finger, instituted an action for divorce. Lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in the sentence beginning "In or about September, 1975," of the said paragraph. Lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in the sentence beginning "On or about September 30, 1975," of this said paragraph. Denies each and every allegation contained in the sentence beginning "Said motion was granted November 10, 1975," of the said paragraph, and sets forth that the firm of Finger, Goldberg, Zinner and Finger, served Black with an answer. Denies each and every allegation contained in the sentence beginning "On January 22, 1976," and sets forth only that the matter was adjourned.

13. Denies each and every allegation contained in the paragraph numbered "Charge Three C1(a)."

14. Denies each and every allegation contained in the paragraph numbered "Charge Three C1(b)," and sets forth that the deed was prepared by the firm of Finger, Goldberg, Zinner and Finger, and said deed was mailed to Mrs. McLaurin with instructions to sign and return the same to firm.

15. Denies each and every allegation contained in the sentence

beginning "On or about March 8, 1976," of the paragraph numbered "Charge Three C1(c)." Lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in the sentence beginning "On March 15, 1976," of the said paragraph.

16. Denies each and every allegation contained in the paragraph numbered "Charge Four D."

17. Denies each and every allegation contained in the paragraph numbered "Charge Four D1(a)."

18. Denies each and every allegation contained in the paragraph numbered "Charge Four D1(b)."

19. Denies each and every allegation contained in the paragraph numbered "Charge Four D2(a)," and sets forth that Tabak did sign an escrow agreement.

20. Denies each and every allegation contained in the paragraph numbered "Charge Four D2(b)," and sets forth that Tabak did sign an escrow agreement.

21. Lacks knowledge and information sufficient to form a belief as to the truth of the allegations contained in the paragraph numbered "Charge Four D3", and sets forth that respondent instituted a lawsuit for the payment of his $1,200.00 fee against Evelyn Sanders.

22. Denies each and every allegation contained in paragraph numbered "Charge Four D3(a)," and sets forth that respondent had secured a default judgment against Evelyn Sanders and did cause an income garnishment to be executed.

23. Denies each and every allegation contained in the paragraphs numbered "Charge Four D3(b)," "Charge Four D3(c)," and "SIXTH."

24. Lacks information and knowledge sufficient to form a belief as to the truth of the allegations contained in the paragraph numbered "SEVENTH."

AS AND FOR A FIRST AFFIRMATIVE DEFENSE

The Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts, lacks jurisdiction to inquire and investigate any matter concerning a lawsuit by an attorney or counselor-at-law, against a client for a disputed fee.

AS AND FOR A SECOND AFFIRMATIVE DEFENSE

The respondent submits and alleges that the within proceeding is barred under the doctrine of "laches", was untimely brought.

AS AND FOR A THIRD AFFIRMATIVE DEFENSE

Respondent submits and alleges that the within proceeding is barred by a failure to proceed and prosecute the within action in degradation of respondent's rights secured under the Federal and State Constitutions.

WHEREFORE, respondent demands the dismissal of the within petition with costs and disbursements to the respondent.

Dated: January 18, 1978

Yours, etc.,
LYON & ERLBAUM
Attorneys for Respondent
WILLIAM L. FINGER
123-60 83rd Avenue
Kew Gardens, New York 11415
(212) 263-3235

TO: NICHOLAS C. COOPER
Attorney for Petitioner,
16 Court Street
Brooklyn, New York 11241

APPENDIX F

At a Term of the Appellate Division of the Supreme Court of the State of New York, Second Judicial Department, held in Kings County on April 21, 1978

HON. JAMES D. HOPKINS, *Justice Presiding*
HON. M. HENRY MARTUSCELLO,
HON. HENRY J. LATHAM,
HON. VINCENT D. DAMIANI,
HON. VITO J. TITONE, *Associate Justices*

In the Matter of William L. Finger, an attorney and counselor-at-law, admitted under the name William Lee Finger.

Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts,

Petitioner;

William L. Finger,

Respondent.

ORDER OF REFERENCE, ETC.

A disciplinary proceeding having been instituted in this court upon the petition of the Joint Bar Association Grievance Committee for the Second and Eleventh Judicial Districts in respect to William L. Finger, an attorney and counselor-at-law, admitted to practice by this court on December 15, 1965 under the name William Lee Finger; the petition praying that the respondent be disciplined for professional misconduct upon the charges therein set forth; the proceeding having come on before this court by a notice of petition, dated December 20, 1977; and the respondent having filed an answer thereto; thereafter, (1) the petitioner

having moved, by a notice of motion dated January 25, 1978, to strike the affirmative defenses raised in the respondent's said answer, and (2) the respondent having moved, by a notice of cross motion dated February 16, 1978, to dismiss the said petition on the ground that the proceeding is barred by petitioner's failure to prosecute and the lack of jurisdiction over the subject matter;

Now, upon the said petition verified December 20, 1977; the said answer verified January 18, 1978; the petitioner's notice of motion and the affidavit of Nicholas C. Cooper in support of the said motion; the respondent's memorandum of law in opposition thereto; the respondent's said notice of cross motion and the affidavit of Herbert A. Lyon in support thereof and the petitioner's memorandum of law in opposition thereto; and upon all the papers filed herein and Nicholas C. Cooper, Esq., having appeared of counsel for the petitioner and William M. Erlbaum, Esq., having appeared of counsel for the respondent, due deliberation having been had thereon; and upon this court's decision slip heretofore filed and made a part hereof, it is

ORDERED that the petitioner's motion to strike the affirmative defenses in the respondent's answer is hereby granted; the matter is deemed struck therefrom and it is further

ORDERED that the respondent's cross motion to dismiss the petition on the ground that the proceeding is barred by petitioner's failure to prosecute and the lack of jurisdiction over the subject matter is hereby denied, and it is further

ORDERED that the issues raised by the petition and the answer are hereby referred to Hon. ALPHONSO LaPERA, a

former Judge of the Nassau County Court, to hear and to report, with his findings upon each of the issues.

Enter:

IRVING N. SELKIN
Clerk of the Appellate Division.

STATE OF NEW YORK

I, IRVING N. SELKIN, Clerk of the Appellate Division of the Supreme Court, Second Judicial Department, do hereby certify that I have compared this with the original filed in my office on April 21, 1978, and that this copy is a correct transcription of said original.

IN WITNESS WHEREOF I have hereunto set my hand affixed of this Court on May 2, 1978.

IRVING N. SELKIN

APPENDIX G

SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION:
SECOND JUDICIAL DEPARTMENT

In the Matter of William L. Finger, Admitted Under the Name of William Lee Finger, an Attorney and Counselor at Law:

JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

Petitioner,

WILLIAM L. FINGER,

Respondent.

TO THE HONORABLE JUSTICES OF THE APPELLATE DIVISION OF THE SUPREME COURT OF THE STATE OF NEW YORK, SECOND JUDICIAL DEPARTMENT:

I, ALPHONSO M. LA PERA, do hereby submit my report as Referee in this proceeding.

This Disciplinary Proceeding was referred to me by order of the Appellate Division, Second Department, which order is dated April 21, 1978, to hear and to report with my findings, upon each issue.

On May 17th, 1978, there was a pre-trial conference at my offices, 47 Main Street, Port Washington, New York, at which Nicholas C. Cooper, Esq., attorney for the Petitioner, appeared, and Lyon & Erlbaum, Esqs., by Charles Wander, Esq., appeared for the Respondent.

Although I was ready to conduct the hearing immediately after May 17th, 1978, the parties were not ready to proceed and it was not until May 16, 1979, that the hearing actually started; the matter having been adjourned because of the illness of Respondent on February 5, 1979.

The hearing on the charges was held in the Court House of the Supreme Court, Nassau County, on February 5, 1979, May 16, 17, 18, 21, 22, 1979, June 18, 1979, and July 2, 1979. Upon completion of the hearing, the attorneys for the parties requested time to submit briefs which request was granted. I did not receive the brief of the Respondent until October 11th, 1979.

Petitioner was represented on the hearing by Nicholas C. Cooper, Esq., by Gary L. Casella, Esq., of counsel, and Respondent was represented by Lyon & Erlbaum, Esqs. by Herbert Alan Lyon, Esq., of counsel.

Respondent is an attorney admitted to the Bar in December 1965, in the Second Judicial District.

FINDINGS

CHARGE ONE

Respondent converted his client's funds to his own use.

In or about November, 1972, Respondent was retained by Paula Screen Printing Corp. to recover $16,000.00 from Precision Screen Machines Co., Inc., a New Jersey corporation; that without the knowledge or consent of his client, he settled the claim for $6801.40 and received a check from Precision Screen Machines Co., Inc. made payable to Respondent, as attorney for Paula Screen Printing Corp. That without the knowledge or

consent of his client, respondent endorsed the said check and delivered same to his wife, who deposited same in her personal savings account in Peninsula National Bank and which moneys were later withdrawn by her.

CHARGE TWO

Respondent caused to be filed fraudulent and untrue affidavits of service in the Supreme Court, Nassau County.

In 1970 one Marvin Tabak, who was represented by Respondent, purchased premises 15 Eden Way, Roslyn Harbor, New York and title thereto was conveyed to Marvin Tabak and his wife, Ronnie Tabak; In July of 1971, said Marvin Tabak conveyed his interest in said property to his wife, who thereupon became the sole owner of record. On May 21st, 1973, Ronnie Tabak entered into an agreement to sell said premises to Jeff McMichaels and Robin McMichaels.

On April 23, 1973, a judgment was entered against the said Marvin Tabak in an action brought by Frank Renato, as plaintiff, in the Civil Court of the City of New York, County of Kings, for the sum of $5599.00. An action was thereafter commenced in the Supreme Court, Nassau County, by the said Frank Renato to set aside the conveyance of the above mentioned property against Marvin and Ronnie Tabak on the grounds that said conveyance was fraudulent. A notice of pendency of action was filed in the Nassau County Clerk's Office covering said property on May 24, 1973.

Imperial Leather Goods Co. also procured a judgment against the said Marvin Tabak for some $5500.00 and also started an action to set aside the conveyance of the aforesaid property from Marvin Tabak to Ronnie Tabak, also on the grounds of fraud. This action was commenced against both Marvin Tabak and

Ronnie Tabak and a notice of pendency of action was also filed against said property in the Nassau County Clerk's Office on June 6, 1973.

As a result of the filing of the Renato Lis Pendens, Ronnie Tabak would be unable to deliver title to the aforesaid premises and it therefore became necessary that same should be cancelled. Respondent prepared an order to show cause in the Renato Supreme Court action to cancel the said Lis Pendens and had Marvin Tabak submit same for signature. This was done on June 1st, 1973, the order being signed by Hon. Robert C. Meade, Justice. The order to show cause was delivered to Respondent who indicated that the order to cancel the Lis Pendens would be granted by default since neither the attorney for Renato nor Renato would be served with a copy of said order to show cause. Respondent thereupon procured the signature of one John A. Haynes to an affidavit of service of said order to show cause upon David Pravda, attorney for Frank Renato on June 4th, 1973. Said affidavit was sworn to before Respondent as a notary public. This affidavit of service was completely false since Respondent had arranged not to serve the said order to show cause and although he knew that this affidavit of service was false, filed same in the Supreme Court, Nassau County. Based upon said false affidavit the motion to cancel the notice of pendency of action filed in the Renato action was granted without opposition, by Hon. Andrew J. DiPaola, Justice of the Supreme Court, on June 20, 1973.

Respondent prepared an order to show cause in the action of Imperial Leather Goods Co. against Marvin Tabak and Ronnie Tabak to cancel the lis pendens in that action and gave it to Marvin Tabak to have it signed by the Court, which order was signed by Hon. Andrew J. DiPaola, Justice of the Supreme Court on June 20, 1973. Once again Respondent indicated to

Marvin Tabak that the same procedure would be followed in this case as was done in the Renato case. Respondent would arrange not to serve the order to show cause and would procure the motion to cancel the lis pendens to be granted by default. On June 22, 1973, Respondent, knowing that no such service had been made, procured one John Haynes to sign an affidavit stating that the said order to show cause had been served on Mr. Elliott M. Rudick of Eagan, Rudick and Hochberg, at 150 Broadway, New York, New York, and having him swear to this affidavit before Respondent, as a notary public, on June 22, 1973. Respondent thereafter procured the said affidavit to be filed in the Supreme Court, Nassau County. Based upon such false affidavit, the said motion to vacate the notice of pendency of action filed on June 6, 1973, was granted on July 2, 1973, by Hon. Robert C. Meade, Justice, there being no opposition, with the decision requiring that the order be submitted on notice. The order was never signed since it was discovered that the attorneys for Imperial Leather Goods Co. had never been served with the order to show cause.

CHARGE THREE

Respondent, while representing the husband in a contested matrimonial action, without the consent or knowledge of the wife's attorney, communicated with the wife concerning the subject of the litigation.

In August, 1975, respondent commenced an action for divorce on behalf of George McLaurin against his wife, Alease McLaurin in the Queens County Supreme Court. Alease McLaurin retained Joseph Fox, Esq., an attorney in Philadelphia, Pennsylvania, and the latter in turn retained Walter Black, Esq., a New York attorney with offices in Great Neck, New York, to represent the said Alease McLaurin in said divorce action. The said Walter

Black made a motion to vacate the default of the said Alease McLaurin and same was granted and an answer was interposed in behalf of said Alease McLaurin in said action.

On January 22, 1976, with knowledge that said Alease McLaurin was represented by the attorney, Walter Black, and without the latter's knowledge or consent, Respondent spoke with Alease McLaurin in the Queens County Supreme Court Building and at Respondent's office. As a result of these conversations, Respondent prepared a deed in which Alease McLaurin conveyed her interest in property owned by her and her husband, to her husband, George McLaurin. This deed was sent to Alease McLaurin with instructions to execute same and to return it to the Respondent. The said Alease McLaurin did so and returned it to Respondent. This was all done without the knowledge or consent of the Attorney, Walter Black, who upon discovering same demanded of Respondent that the said deed be returned to him.

CHARGE FOUR

Respondent knowingly attempted to impede and obstruct the legitimate investigations of complaints of professional misconduct against him as follows:

1. (a) (b) On or about October 12, 1973, William H. Blair filed a complaint with the Queens County Bar Association alleging that Respondent had failed to account for $6800.00. With knowledge that this complaint was being investigated, Respondent returned $6000.00 of said moneys after he induced William H. Blair to sign a letter addressed to said Bar Association falsely stating that the complaint was a gross misunderstanding and requesting that the complaint be withdrawn.

2. (a) (b) On or about December 10th, 1973, Marvin Tabak filed a complaint with the Queens County Bar Association against Respondent; with knowledge that said complaint was being investigated by said Bar Association, respondent offered to pay $1375.00 to said Marvin Tabak on condition that Tabak would send a letter to the said Bar Association withdrawing the said complaint and that same be accepted. Respondent prepared and induced Tabak to sign an escrow agreement which provided that the sum of $1375.00 would be deposited with one Arthur Rothlein to be paid to Tabak upon receiving formal notice of approval of the withdrawal of the complaint by said Bar Association.

3. (a) (b) (c) Withdrawn.

As hereinabove set forth, I find all charges set forth in the petition of the Joint Bar Association Grievance Committee dated December 20, 1977, except 3 (a) (b) (c) of Charge Four which is withdrawn, to have been sustained by the evidence submitted before me on the hearings, and I submit with this report the transcript of the hearings, the transcript of the testimony taken before the Grievance Committee of the Queens County Bar Association which was offered in evidence by consent, the exhibits introduced into evidence on the hearings, and the briefs and proposed findings submitted by the attorneys for the parties hereto.

Dated: October 18, 1979.

Respectfully submitted,

ALPHONSO M. LA PERA, Referee

No.————

IN THE

Supreme Court of the United States

October Term, 1980.

WILLIAM FINGER,

Petitioner,

against

JOINT BAR ASSOCIATION GRIEVANCE COMMITTEE FOR THE SECOND AND ELEVENTH JUDICIAL DISTRICTS,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SECOND JUDICIAL DEPARTMENT.

Respondent's Brief in Opposition to Petition for a Writ of Certiorari to the Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department.

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Respondent's Brief in Opposition to Petition for a Writ of Certiorari to the Appellate Division of the Supreme Court of the State of New York for the Second Judicial Department.

Preliminary Statement.

Respondent's brief is submitted in opposition to the petition for a writ of certiorari, pursuant to the denial, by order dated October 9, 1980, of the New York Court of Appeals to grant leave to appeal, *Matter of Finger,* 51 N. Y. 2d 706, from the order of the Appellate Division of the

Supreme Court of the State of New York for the Second Judicial Department, which by order entered on August 11, 1980, disbarred petitioner. *Matter of Finger,* 76 A. D. 2d 403 (2nd Dept. 1980).

Jurisdiction.

Petitioner seeks to invoke the jurisdiction of this Court under Title 28 U.S.C. §1257(3).

Statement of the Case.

Substantial factual errors have been made in the petition for writ of certiorari, as well as omissions of critical points.

The Appellate Division, Second Judicial Department, in disbarring petitioner, sustained all the charges brought against him, as the referee found, except one minor allegation, under Charge Four, (3) (a) (b) (c), which was withdrawn by respondent, prior to the issuance of the referee's report.

The evidence adduced at the hearings before the referee, which led to petitioner's disbarment, was substantial. Succinctly put, it established the following:

CHARGE ONE:

Petitioner was retained in or about November, 1972, by William H. Blair and Jesse Johnson, who were the principals of Paula Screen Printing Corp., to recover $16,000 which had been paid to Precision Screen Machines Co., Inc., in accordance with the purchase of a screen printing machine.

In or about February, 1973, petitioner, without the knowledge of his clients, agreed to accept $6,801.40 in settlement.

On or about March 26, 1973, petitioner received the check of Precision Screen Machines Co., Inc., in the sum of $6,801.40, which was made payable to the order of "William L. Finger, Attorney for Paula Screen & Print Company."

Petitioner endorsed the check and turned it over to his wife, Anita J. Finger, who, on April 4, 1973, deposited it into her personal account at Peninsula National Bank, in Hewlett, New York. The money was thereafter withdrawn from the account.

The charge was sustained that petitioner converted his clients' funds to his own use.

The statement in the petition for writ of certiorari, that Jesse Johnson, Jr., was convicted of drug trafficking and that he served time in jail, is absolutely erroneous. Rather, it was his brother Robert Johnson, who was never called upon by either side, to testify in this proceeding.

Petitioner makes reference to a document signed by Jesse Johnson, which purportedly assigned his share of the $6,801.40 settlement check to petitioner. However, petitioner fails to note that the evidence adduced established that Jesse Johnson is illiterate and testified that he didn't know what he was signing when petitioner put it before him and that he never authorized petitioner to settle the matter, much less to take the proceeds thereof.

CHARGE TWO:

Petitioner was found guilty of having caused to be filed false and fraudulent affidavits of service in the Supreme

Court of the State of New York, Nassau County, as set forth in the report of the referee and the order of the Appellate Division, Second Judicial Department, dated August 11, 1980.

CHARGE THREE:

Petitioner was found guilty of having communicated with the wife of his client, the husband, during the course of a matrimonial action, without the knowledge or consent of the wife's attorney, as follows:

On or about August 5, 1975, petitioner on behalf of his client, George McLaurin, brought an action for divorce in the Supreme Court of the State of New York, Queens County, against the wife, Alease McLaurin.

When she failed to interpose an answer, the case was placed on the uncontested matrimonial calendar.

In or about September, 1975, Mrs. McLaurin, an unsophisticated woman, who was living on public assistance in Philadelphia, Pennsylvania, retained a Pennsylvania attorney, Joseph Fox, who in turn hired a New York attorney, Walter Black, to represent her.

On or about September 30, 1975, Black moved on Mrs. McLaurin's behalf to vacate the note of issue that had been filed and for leave to interpose an answer and to counterclaim. The motion was granted and shortly thereafter petitioner served a response on behalf of his client on Black.

The matter was placed on the contested matrimonial calendar.

On the morning of January 22, 1976, the action appeared on the trial calendar, but was adjourned since only

Black was present. Later that morning and after Black left, petitioner appeared in Court with Mr. McLaurin. Mrs. McLaurin also appeared. She and her husband, from whom she was separated at the time, accompanied petitioner back to his office.

Without the knowledge or consent of Mrs. McLaurin's attorney, at said meeting on January 22, 1976, petitioner caused a deed to be prepared, by which Mrs. McLaurin would convey her one-half interest in a house located in Jamaica, New York, to her husband. They owned the house as tenants by the entirety. Mrs. McLaurin testified that said house was her only asset.

After the meeting, petitioner mailed the deed to Mrs. McLaurin in Philadelphia, with a request that she execute the deed and return it to him, which she did.

Thereafter, Mrs. McLaurin discharged Black and proceeded without counsel.

CHARGE FOUR:

This charge was also sustained, in that petitioner knowingly attempted to impede and obstruct the legitimate investigation of complaints of professional misconduct against him by inducing William H. Blair to sign a letter addressed to the Queens County Bar Association, falsely advising that the complaint which alleged that he had failed to account for the $6,800, *supra*, was a gross misunderstanding and requesting that it be withdrawn. He thereafter returned $6,000 to Blair.

Further, he offered to pay Marvin Tabak $1,375 on condition that he send a letter to the Queens County Bar Association withdrawing his complaint and that said withdrawal be accepted. To that end, petitioner prepared

and induced Tabak to sign an escrow agreement which set forth that $1,375 would be deposited with Arthur Rothlein, to be turned over to Tabak upon the acceptance of the withdrawal of the complaint by the Queens County Bar Association.

On the basis of the aforesaid findings, pursuant to the evidence elicited at the hearings, petitioner was disbarred from the practice of law.

POINT ONE.

Petitioner was accorded due process of law.

Petitioner's claim that there has been undue delay in these proceedings is without merit.

The Grievance Committee of the Queens County Bar Association received the Tabak and Blair complaints in 1973. In 1974 extensive hearings were conducted by the Grievance Committee of the Queens County Bar Association concerning the Tabak matter, at which time witnesses gave testimony, including petitioner and documents were put into evidence.

Petitioner was represented at those hearings by Herbert Lyons, Esq., the same attorney who represented him at the hearings before the referee.

The minutes of the testimony before the Queens County Bar Association comprised almost one thousand pages.

Thereafter, in or about 1975, the Tabak and Blair matters were forwarded to petitioner for further proceedings.

The statement by petitioner that the Queens County Bar Association did not feel that the Blair complaint (Charge One) had any basis is not borne out by the record and is

apparently untrue, since it was forwarded in order to be pursued. In any event, petitioner was found guilty of conversion of escrow funds with respect thereto (Charge One).

The time that elapsed until the disciplinary proceeding was authorized is largely explained by virtue of the receipt by respondent of nineteen additional complaints of professional misconduct against petitioner during the period of March 2, 1975 and December 29, 1976. All of those complaints had to be investigated.

On or about December 20, 1977, respondent caused the formal charges to be served on petitioner. During the period 1977 until the disbarment order of August 11, 1980, an additional eight complaints were received against petitioner.

The case of *Kelly v. Greason,* 23 N. Y. 2d 368, 383 (1968), involved a passing of five years from the *filing of disciplinary charges* against an attorney until the Appellate Division order of suspension. (Emphasis supplied.) The Court of Appeals of the State of New York ruled in *Kelly* that:

> "Disciplinary proceedings are generally pursued at a cautious pace, because of the serious effects upon practitioners. Since the proceedings are not public, the effect of their prosecution is controlled. *The five years that passed from the filing of charges until the Appellate Division order of suspension,* although undesirable are not inordinate as these matters go. Moreover, much of the delay was due to Whalen himself in obtaining adjournments." (Emphasis supplied.)

In the case at bar, the charges in the disciplinary proceeding were served in 1977. Any delay thereafter was principally occasioned by petitioner himself. The three or four years that passed from the time that the Queens County Bar Association received the two complaints in or about 1973, held hearings in 1974, forwarded the matters to respondent in 1975 and the charges were served in 1977, is of course less than the five years that passed in *Kelly* where undue delay was not found to have existed.

A reading of *Kelly* leads to the conclusion that in an appropriate case, where delay has been excessive, as opposed to the instant matter, laches might apply.

Therefore, clearly the absurdity of petitioner's claim that constitutional rights do not attend disciplinary proceedings in New York is displayed.

A review of the evidence resulting in petitioner's disbarment, which was based on two extensive hearings at which he was represented by able counsel, manifests how flippant the statement by petitioner is that his loss of license to practice law was based, "* * * on no more than the whim and caprice of those who prosecuted the charges" (p. 17).

The allegation regarding Charge Two, *supra,* that the death of the process server, Haynes, prior to the hearings before the referee, prejudiced petitioner is incredible. Haynes was extensively cross examined by petitioner's counsel at the Queens County Bar Association hearings. Said attorney also represented petitioner at the hearings before the referee. No objection was ever raised of such alleged prejudice, prior to the filing of the instant petition for writ of certiorari.

Further, the testimony of five witnesses, including Haynes, given at the Queens County Bar Association, was

admitted into evidence before the referee, pursuant to stipulation of petitioner. A sixth witness who had testified at the Queens County Bar Association, Marvin Tabak, was produced by respondent at the request of petitioner who through his attorney conducted a lengthy cross examination.

Concerning Charge One, petitioner has raised a claim that he didn't urge before the Appellate Division, Second Judicial Department, prior to his disbarment; namely, that he had a retaining lien for the $6,801.40. This is patently absurd.

The referee found, and indeed the Appellate Division, Second Department, sustained his findings in full, that petitioner converted the $6,801.40 and without the knowledge or consent of his clients deposited same in his wife's personal account and then withdrew same for his own use. The evidence established, as described above, that, through fraud and deceit, petitioner secured the settlement. He had Jesse Johnson, Jr., sign the name of his father, Jesse Johnson, to a corporate release to effect the settlement. Jesse Johnson, Jr., testified that he didn't know what he was signing, but thought it had to do with his matrimonial problem, for which he had gone to see petitioner. Further, petitioner as notary, knowingly falsely acknowledged the signature of Jesse Johnson, Jr., to be that of his father.

When he received the check for the settlement for $6,801.40, petitioner then concealed same from his four law partners and deposited the check into his wife's personal account.

If the settlement hadn't been arrived at through fraud and deceit, at best, petitioner would have been entitled to perhaps his one-fifth share of one-third of the settlement,

as a partner of the firm of Teller, Schreiber, Goldenthal, Salaway and Finger, or approximately $450. However, in view of his egregious conduct in procuring the $6,801.40, there can be no other conclusion than that petitioner was clearly not entitled to hold said proceeds which he then converted. Accordingly, the argument that he had a retaining lien is at best the creation of a vivid imagination.

Petitioner's assertion regarding Charge Four that he should have had the same access to witnesses that respondent did is a simplistic argument. It ignores the evidence that these witnesses were approached by petitioner for the purpose of attempting to obstruct the investigation and induce them to fraudulently withdraw their complaints, since petitioner it develops had a great deal to fear by the investigation going forward.

CONCLUSION.

The petition for a writ of certiorari should be denied.

Dated: Brooklyn, New York,
January 23, 1981.

Respectfully submitted,

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GARY L. CASELLA,
Of Counsel.